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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,671	10/18/2004	Helga Rothe	3109	4075

7590
Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

06/27/2007

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,671

Applicant(s)

ROTHE ET AL.

Examiner

Eisa B. Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,25 and 26 is/are allowed.
- 6) ☒ Claim(s) 13-17, 19-24 and 27-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on June 11, 2007.

2 A request for continued examination under 37 CFR 1.114, including the fee set forth in
37 CFR 1.17(e), was filed in this application after final rejection. Since this application is
eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)
has been timely paid, the finality of the previous Office action has been withdrawn pursuant to
37 CFR 1.114. Applicant's submission filed on 6/11/2007 has been entered.

Claim Rejections - 35 USC § 102

3 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this
or a foreign country, before the invention thereof by the applicant for a patent.

Claims 13-17, 19-24 and 27-33 are rejected under 35 U.S.C. 102(a) as being anticipated
by Masato Yoshioka et al. (JP 2003-104847). English translation of the Japanese Patent No.
2003-104847 is used in this rejection.

Masato Yoshioka et al. (JP' 847) teaches a cosmetic composition comprising siliconized
peptide-polysiloxane compound of a formula (I), in which Pep. represents a peptide having an
amino acid chain of 1-20 which with the claimed range as claimed in claims 13-15 and covered
the claimed range as claimed in claim 16 and wherein R1-R3 represent hydroxyl radicals
(silicone polyols) as claimed in claims 17 and 19-21 (see pages 7-8, paragraph, 0009, formula
(I)), wherein the composition also comprises perfumes as claimed in claim 13 (see page 22,

Art Unit: 1751

paragraph, 0034), wherein the cosmetic composition make the hair surface smooth to improve the combability, imparts moistness and have excellent hair setting power and split hair proving effect (see page 6, paragraph, 0008). Masato Yoshioka et al. (JP' 847) also teaches a method for applying the cosmetic composition as described above to the hair as claimed in claims 22-24 and 27-29 (see pages 53-54, paragraphs, 0088-0091). Masato Yoshioka further teaches that the peptidic linker is a glycine or lysine as claimed in claims 30-33 (see page 11, paragraph, 0015). Masato Yoshioka et al. teaches all the limitations of the instant claims. Hence, Masato Yoshioka et al. anticipates the claims.

Allowable Subject Matter

4 Claims 18 and 25-26 are allowed. The prior art of record do not teach or disclose the limitations of these claims in which the organic cosmetic effectors molecule is at least one direct dye of the claimed species.

Response to Applicant's Arguments

5 Applicant's arguments filed on June 11, 2007 have been fully considered but they are not persuasive.

With respect to applicant's argument based on the anticipation rejection by Massato Yoshioka (JP 2003-104847), if applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a certified English translation of the foreign application must be submitted in reply to this action. 37 CFR 41.154(b) and 41.202(e).

Failure to provide a certified translation may result in no benefit being accorded for the non-English application.

Art Unit: 1751

With respect to applicant's argument that the reference does not disclose or suggest the peptidic linker having binding specificity for keratin-containing material, the examiner would like to point out that the reference clearly teaches and disclose peptidic linkers of glycine, lysine and serine which are identical to the claimed peptidic linkers (see page 11, paragraph, 0015). Therefore, the rejection under 102(a) as being anticipated by Massato Yoshioka (JP' 847) is proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/511,671

Page 5

Art Unit: 1751

/Eisa Elhilo/

Primary Examiner, A.U. 1751

June 22, 2007